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Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 4, 4 *bis*, 7, 7 *bis*, 7 *ter*, 10, 14 (paras. 14-22) and 15-19

Proposals and contributions received from Governments

Addendum

Contents

		Page
II.	Proposals and contributions received from Governments	2
	Australia	2
	Canada	2
	China	2
	France and Sweden	2
	India	2
	Lithuania	2
	Mexico	4
	Netherlands	5
	New Zealand	5
	Syrian Arab Republic	5
	United States of America	5

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II. Proposals and contributions received from Governments

Australia

[*See document A/AC.254/L.48.*]

Canada

[*See document A/AC.254/L.42.*]

China

[*See document A/AC.254/L.64 and the amendments to article 14, paragraphs 14 and 16, contained in document A/AC.254/L.50.*]

France and Sweden

[*See document A/AC.254/L.47.*]

India

[*See document A/AC.254/L.43.*]

Lithuania

[Original: English]

Article 4: Money-laundering

Paragraphs 3 (b) and (c)

1. Paragraphs 3 (b) and (c) recommend that States Parties provide for liability for money-laundering in cases where the offender acted for the purpose of making a profit or for the purpose of promoting the perpetration of further criminal activity. Lithuania considers that the wording of those provisions should be revised so as to eliminate the possibility of interpreting the provisions of the Convention as recommending that State Parties commit themselves to prosecute persons who have committed crimes of money-laundering only in cases when the crimes do not have the characteristics indicated in the paragraphs mentioned.

Article 7: Confiscation

Paragraph 7

2. Lithuania considers that paragraph 7 should emphasize that the requirement to demonstrate the lawful origin of the property acquired should be applicable only with respect

to persons convicted for crimes covered by the scope of the Convention. Lithuania is of the opinion that this paragraph could also indicate the legal measures to be taken against a person who has failed to prove the lawful origin of such property. On the other hand, this paragraph should also establish the compatibility of its provisions with the presumption of innocence related to acquisition of property.

Article 7 *bis*: International cooperation for purposes of confiscation

3. Considering that individual States maintain different confiscation procedures and that in certain cases the attitude towards the grounds for the confiscation of property and the principles of application of such a measure differ from State to State, Lithuania considers that article 7 *bis* of the Convention should stipulate that States Parties have the right to refuse to satisfy the request for confiscation in cases where the requesting State took the decision to confiscate property without making a conviction and where in the requested State confiscation is possible only after a conviction has been made.

Article 7 *ter*: Disposal of confiscated assets

Paragraph 1

4. Paragraph 1 provides that proceeds of crime confiscated by a State Party at the request of another State Party shall be disposed of by the State that confiscated them. It is not at all clear on what grounds the confiscating State acquires title to the confiscated property. Note should be taken of the fact that the person who obtained the proceeds from criminal activities is not entitled to those proceeds and the proceeds themselves may in certain cases have been obtained at the expense of the ownership of the State that has requested the confiscation.

Article 10: Extradition

5. Lithuania is of the opinion that the Convention should regulate more consistently the grounds for refusal of extradition by focusing in particular on cases where extradition of a person is refused to a State where he or she is likely to face a cruel or inhuman sentence, including capital punishment.

Paragraph 2

6. Paragraph 2 obliges States Parties to deem the offences to which the Convention applies to be extraditable offences in every international extradition treaty to be concluded with other States. Naturally, it is possible to assume the commitment to stipulate a certain provision in an international treaty only when all of the parties to such a treaty to be concluded undertake analogous commitments to follow such a provision. However, it would be useful to include in the Convention the obligation for States Parties to seek to include the offences covered by the scope of the Convention in the lists of extraditable offences provided for by extradition treaties concluded with States other than States Parties to this Convention.

Paragraph 6

7. Lithuania is of the opinion that paragraph 6 should provide a definition of the term "prejudice", since this term may be used in two senses, to mean either "an unfavourable opinion or feeling formed beforehand or without knowledge, thought or reason" or "any preconceived opinion or feeling, either favourable or unfavourable". Enforcement in the Convention according to the latter meaning of the term, and thus establishment of the right of

States Parties to refuse extradition on the grounds that the State requesting extradition may impose an unreasonably mild punishment on the offender, would be a risky though progressive step towards limiting even further the possibilities for members of organized criminal groups to find a "safe haven".

Paragraph 8

8. Paragraph 8 provides that a State Party may take into preliminary custody only the "person whose extradition is sought". Lithuania ventures to suggest that a more precise definition be provided in the Convention of the moment at which the person may or should be taken into custody. The Convention could also make it clear that States Parties are obliged to apply preliminary detainment before extradition is officially sought.

Article 14: Mutual legal assistance

Paragraph 6

9. Paragraph 6 provides that States Parties may not decline to render mutual legal assistance on the ground of dual criminality unless the assistance required involves the application of coercive measures. Lithuania considers that States should not have to undertake to render mutual legal assistance in all cases, unless their domestic laws provide for liability for the actions with respect to which such assistance is being requested. There is no universally acknowledged legal principle on the basis of which a State must assist another State in applying coercive measures in relation to actions that that State itself does not treat as criminal.

Paragraph 13

10. Paragraph 13 obliges a State Party to establish penal liability for perjury committed via video link or other modern means of communication. Account should be taken of the fact that such perjury is committed in the territory of another State and the issue of establishment of extraterritorial jurisdiction over crimes of this type should therefore be clarified in the Convention.

Article 19: Law enforcement cooperation

Paragraph 2 (c)

11. This subparagraph provides that officials of any State Party participating in joint teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place. Taking account of the basic principle of international cooperation in combating transnational organized crime established in paragraph 4 of article 2 of the draft Convention, this paragraph should be amended by adding a provision that persons participating in joint operations taking place in the territory of another State should not only be specially authorized by but also to a certain extent subordinated to the appropriate authorities of the State where they carry out their activities.

Mexico

[*See the amendment to article 14, paragraph 20, contained in document A/AC.254/L.44.*]

Netherlands

[*See document A/AC.254/L.45.*]

New Zealand

[*See the comments on articles 10 and 14 in document A/AC.254/L.41.*]

Syrian Arab Republic

[*See the comments on articles 10 and 14 in document A/AC.254/L.34.*]

United States of America

[*See the amendments to articles 10 and 14, paragraphs 2-5, contained in document A/AC.254/L.33.*]